

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re)	
)	
Minority Television Project, Inc.)	
License of Noncommercial Television Station)	MB Docket No. 17-313
KMTP, Channel *32)	CSR-8946-M
For Carriage of KMTP(TV), San Francisco,)	
California)	

To: Chief, Media Bureau

REPLY TO DISH NETWORK RESPONSE

I. INTRODUCTION

Minority Television Project, Inc., (“MTP”), licensee of non-commercial television station KMTP-TV, Channel *32, San Francisco, California (“KMTP”), by its attorneys, hereby files this Reply, pursuant to Sections 76.7 and 76.66(m)(3) of the Commission’s Rules, to Dish Network’s Response to MPT’s Carriage Complaint. In its Complaint, MTP demonstrated that it was recently unlawfully denied carriage of KMTP on the Dish system in violation of Section 76.66(d)(1)(i) of the Commission’s Rules, 47 C.F.R. § 76.66(d)(1)(i). MTP requested an order directing Dish to restore carriage of KMTP.

Attached to its Complaint, MTP submitted a copy of the letter received from Dish.¹ The letter shows that Dish denied carriage for only one reason: Dish asserted that MTP provided notice to it by “Priority Express Mail, return receipt requested,” instead of “Certified Mail, return

¹ Letter to Booker Wade from Teresa Cain, October 9, 2017.

receipt requested.” This was the sole reason given in the denial letter.

In its Response, Dish does not deny that the sole reason it denied KMTP carriage was because the notice was given via “Priority Express Mail, return receipt requested,” instead of “Certified Mail, return receipt requested.” Dish does not allege any harm to it because of this method of notice. Dish does not allege that it failed to receive the required notice in a timely matter, or that it could not read the contents of the notice. Rather, Dish alleges that the mere identification on the postal delivery notice, showing that it was sent Priority Mail, not Certified Mail, is a sufficient basis for it to deny KMTP’s mandatory carriage rights.

In its Response, Dish attempts to avoid having the Commission address the merits of MTP’s Complaint, by asserting that the Complaint was filed prematurely. Dish asserts that MTP was obligated to send Dish a letter complaining of Dish’s refusal to carry KMTP. However, a plain reading of Section of 47 C.F.R. § 76.66(d) of the Commission’s Rules, cited by Dish, shows that the purpose of this provision is to assure that the satellite provider is aware of the issue regarding a denial of carriage before a complaint is filed. Here, the denial of carriage came in a letter from Dish. Therefore, there is no possibility that Dish was unaware that MTP believed that Dish had improperly denied carriage to KMTP. Thus, sending an additional letter to Dish would have been a waste of time. As time is of the essence when a loss of carriage is at issue, it is unreasonable to believe that the Commission would require MTP to send a second letter to Dish in this situation. Thus, the Commission should not fail to address the merits of MTP’s Complaint because of this alleged failure to comply with that rule.

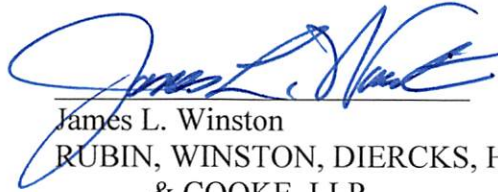
Finally, Dish attempts to demonstrate its reasonableness by asserting that, had MTP sent it a second letter, Dish might have responded with an offer to consider entering into a

retransmission consent agreement with MTP. While, MTP would be quite willing to enter into an agreement for carriage with Dish, MTP notes that, Section 76.64(a) of the Commission's rules mentions only commercial television stations as having the right to enter into retransmission consent agreements. Thus, it would appear that any carriage agreement between Dish and MTP would need to be something other than a retransmission consent agreement. MTP is willing to enter into such discussions with Dish, provided however, by indicating its willingness to enter into such an agreement, MTP does not now, nor does it intend at any subsequent time to waive or surrender its mandatory carriage rights for this or a future election cycle.

In conclusion, MTP has demonstrated that Dish's refusal to accord MTP its mandatory carriage rights at this is an attempt to place form over substance. There is no deficiency in the notice given to Dish of the mandatory carriage requested by MTP. All of the information required by Section 76.66(d)(1) of the Commission's Rules is provided, and Dish does not dispute this. Rather, Dish asserts that, because the notice came via Priority Express Mail, instead of Certified Mail, Dish may deny the carriage request.² Given the clear issue presented, and the clear lack of any justification for this hyper-technical reading of the Commission's rule, MTP submits that the Commission can and should immediately order Dish to begin carriage of KMTP.

Respectfully submitted,

² As MTP explained in its Complaint, Priority Express Mail is not only a functional equivalent of Certified Mail, it is a superior service in that it provides next day delivery and it is traceable. Put differently, Certified Mail is a lesser included service to Priority Express Mail. Also, Priority Express Mail did not exist at the time of the adoption of the Section 76.66.



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CERTIFICATE OF SERVICE

I, Sheree Kellogg, do hereby certify that on December 11, 2017, a true copy of the foregoing "Reply to Dish Network Response" was mailed, first class U.S. mail, postage pre-paid to the following:

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